

CITY OF LEWISTON
PLANNING BOARD MEETING
MINUTES for November 8, 2010

- I. **ROLL CALL:** The meeting was held in the City Council Chambers on the First Floor of City Hall and was called to order at 5:30 p.m. Vice Chairperson, Bruce Damon, chaired the meeting.

Members in Attendance: Bruce Damon, Denis Fortier, Paul Robinson, Trinh Burpee, Kevin Morissette and Eric Potvin

Members Absent: Lucy Bisson

Associate Member Present: Michael Marcotte and Sandra Marquis

Staff Present: David Hediger, City Planner, Gil Arsenault, Director of Planning & Code and Cathy Lekberg, Administrative Assistant, Economic & Community Development

Sandra Marquis was appointed full voting member for this meeting.

- II. **ADJUSTMENT TO THE AGENDA:** None

- III. **CORRESPONDENCE:** Site Plan entitled Deer Ridge Revision #2

- VI. **PUBLIC MEETING:**

A proposed amendment to Appendix A, Article II, Definitions, Article V, Administration and Enforcement, and Article IX, District Regulations pertaining to marijuana dispensaries and registered primary caregivers. Specifically, the proposed amendment would establish definitions of said uses. Registered primary caregivers would be permitted in the HB, OS, I, and UE zoning districts. Marijuana dispensaries would be permitted as a conditional use in the HB, OS, I, and UE zoning districts.

Gil stated that this issue has been discussed by the Board in the past and at the last meeting there were concerns about the primary caregivers being considered as a home occupation. After that meeting, he stated he met with Chief Bussiere, Chief LeClair and Ed Barrett and talked about the proposed zoning and land use changes and licensing provisions. He stated they had the same concerns. This draft references primary caregivers that cultivate marijuana for two to five patients would be limited to the four zoning districts that were mentioned, HB, OS, I and UE. Primary caregivers that cultivate marijuana for one patient would be allowed throughout the City but not in multi-family dwellings and not within 500 feet of a school. He stated that this was one big change from the last meeting.

Gil stated he submitted the zoning and land use changes and licensing provisions to the City Attorney last Friday, October 28th late in the afternoon and he expects

to have his comments by Wednesday and depending on what the City Attorney says, what we have done from a proposal standpoint may be consistent or may not be. He stated at this point the Board should discuss any points they may have, but the Board needs to hear what the City Attorney's opinions are before they move forward. At a minimum the Board may want to table this item.

Paul asked the Police Chief and City Administrator are comfortable with the concerns and issues raised and Gil stated they are pretty much up on this. He stated the concern is that there is are likely to be issues with the cultivating primary caregivers. They will be essentially registered by the State and in order for the State to do an inspection, they need to give a caregiver a 24-hour notice. He stated that each district will have one dispensary and there will be one in Auburn. He stated he feels that there would be no issues with the dispensaries but thinks there will be problems with the primary caregivers. Bruce agreed with this. Bruce stated one area he had concerns about is on Page 2 where it talks about the definitions, registered primary caregiver means a person, a hospice provider or a nursing facility licensed under Title 22 that provides care for registered patients and have been named by the registered patient as the registered primary caregiver. Bruce stated in a large nursing facility like Montello Manor or Marshwood, how are they going to control who is dispensing, who is touching it and who would be keeping it under lock and key. Gil stated they are not talking about licensing patients nor are they talking about licensing or regulating nursing facilities. He stated the ordinance only talks about regulating primary caregivers that cultivate because of the issues of extension cords, mold, moisture issues, and security issue. The State will regulate patients and primary caregivers. Paul asked about Auburn and do they have similar rules and regulations. Gil stated Auburn is comfortable with the state rules as they exist.

Trinh asked if there will be a State laboratory that tests these plants for ecoli or diseases or viruses growing on the plants and Gil stated he thinks for the most part the State will be concerned with the dispensaries and not the primary caregivers.

Sandra asked if there were regulations for the amount of marijuana a primary caregiver can grow, and Gil stated yes, they can grow six female plants per patient, they can have five patients and distribute 2 ½ ounces per patient. He stated he does not know what it would cost.

Gil stated the Board needs to be very comfortable before making a recommendation to the City Council. Above and beyond zoning and land use, he would like the Board to look at the licensing as well.

Bruce brought up his concern on Page 2 and he stated it does not seem appropriate to register a nursing facility. Gil stated that is not what they are doing. Bruce stated that is what it says. Gil noted the ordinance is not advocating regulating registered patients. Bruce stated that patients have to

register with the State and Gil stated yes with the State, not us. Paul stated that a dispensary would need to be registered like a food establishment. The City food inspector should be involved in the dispensary also. Gil stated if they are preparing food for a patient they would need to get a food license from the city.

Gil asked Bruce if Section 3 as proposed clarifies this and Bruce said it does not and is very poorly worded. Gil stated that Section 3 makes it clear that the only caregivers that will be registered will be the ones that are growing marijuana. Any of the others will not be regulated. Bruce stated his concern is that when we talk about either hospice care or nursing homes being allowed to be shifted to be called primary caregivers, whether they are growing or not, you leave the potential open to expose people that work in those facilities to an unwarranted risk of prosecution if there was a random drug test. Gil stated we can ask the City Attorney about this. Gil stated it is still contrary to federal law and at any point of time the chief of police or anybody in drug enforcement can prosecute anybody who is violating the rules is subject to criminal penalty.

Bruce asked who is doing the background checks listed in Section 22-246 and Gil stated that it will be paid with the licensing fees. Bruce asked about Section 22-429, Page 6, #7 – A registered primary caregiver not engaged in the cultivation may be in the presence or vicinity of the medical use of marijuana and assist any registered patients with this, will they be subject to testing and Gil stated no, the ordinance only addresses the cultivating aspect of it. Bruce stated that this is an enforcement nightmare and that marijuana is still illegal in this country.

Eric asked about Article 5, Section 3 the newer part subsection X, where did that come from and Gil stated that is our language. Eric stated he does not understand why everyone does not get marijuana from the dispensaries. Eric stated he was under the impression that all of it would be coming from the dispensaries and if you lived in Farmington, you would have to go to Auburn to get the marijuana. Gil stated that is why they have primary caregivers to go pick it up for a patient. Paul stated he thinks a lot of this will shake out in a period of time and the problems with the program will be worked out.

Denis asked what they would expect from the City Attorney this week. Gil stated the question posed to the City Attorney was whether the ordinance was clear, understandable and enforceable. Gil stated he will pose the specific questions that Bruce has asked once he gets Marty's opinion on Wednesday.

Bruce stated that the State of Maine has the most liberal drug testing policy statutorily in the Country. He stated that as an employer, he cannot do drug testing unless they have an accepted written policy and also would need a reason for doing the drug testing. He stated ~~is it~~ it is because the Lewiston Police Department will be doing the drug testing; they do not have to follow the same rules as an employer. He stated this should be a question to ask Marty. He asked who would be paying for these tests and Gil stated it would come out

of the licensing. Bruce stated that if in fact this goes forward as proposed, then the fee would have sufficient funds to offset reasonable costs for the Fire Department, Code Enforcement and the Police Department to do an inspection and any follow-up the police would have to do. Bruce asked if this is a yearly fee and Gil stated yes.

Bruce asked if there are potential privacy issues from a patient care standpoint and Gil stated not with the dispensary because we are only talking about the conditional use applying to the dispensary. As far as licensing is concerned, we do not need to know who the patients are. The Police Department may need to know occasionally for enforcement issues but the public does not have to know. Bruce questioned the information to be included on the application for the cultivation by a registered primary caregiver, Gil stated we do not need to know who the patients are; we just need to know that they are going to cultivate marijuana for five patients and where and how you are going to do it. Bruce stated that the patient information will remain confidential, and Gil stated yes. Bruce asked how the Police Department deems there are only five patients and Gil stated that we have a mandatory City license provision. If you decide not to get the license and grow and sell marijuana to people, that is a criminal act and the police will deal with that. Anyone that is licensed will be inspected occasionally.

Denis Fortier left the meeting at 6:10 p.m.

Paul stated that the neighbors will smell it when it is smoked. Bruce stated if we approve a conditional use for this purpose and we get complaints from the neighbors, how do we deal with that and Gil stated that would be an enforcement matter and licensing situation. If we feel there are violations, the Police Department will act accordingly. Bruce questions what will be the legal basis of revoking the license. Gil stated we have an environmental performance standard that deals with odors. He stated that this would probably be a problem with the larger grow operations not a single family home. Bruce stated he thinks it is still a violation of every federal law out there and does not want to encourage it. Gil stated that if we said that primary caregivers cannot cultivate in the City, it would be struck down. The voters spoke loud and clear on November 3rd last year. People have been able to have limited possession of marijuana in this State for ten years but there was never a legal way to get. Bruce stated we are creating an enforcement nightmare. Gil stated that this item can be tabled and discussed at the next meeting. Gil stated that the Board can also attend the Council Workshop on January 16th. Bruce asked for a motion.

The following motion was made.

MOTION: by **Sandra Marquis** to table the public hearing item pertaining to marijuana dispensaries and registered primary caregivers. Second by **Eric Potvin**.

VOTED: 6-0 (Passed)

Bruce asked Gil if he could bring the zoning map to the next meeting when the Board is discussing this so we know exactly where the various districts are located..

Gil Arsenault left at 6:20 p.m.

V. OTHER BUSINESS:

- a. Request by Survey Works, Inc. on behalf of Bob Foss/Land Tree Corp. for a de minimis change and extension of approval for Deer Ridge Subdivision located at 34 Deer Road which was tabled from September 21, 2010.

David stated the subdivision project on Deer Road was approved in 2007 and 2009. Bob Foss, the developer has gone out and grubbed the roads but it does not meet the definition of substantial development so the project was about to expire and they are asking for a two year extension of approval. Secondly they want to sell the lots that have frontage along Deer Road. He stated he has worked with George Courbron of Survey Works to draft the conditions of the approval that are at the bottom of the plan.

George Courbron stated that the majority of the road sub base is done and the sewer has been completed in its entirety and approved by the City Sewer Department. He stated water has not been put in the Phase 2 portion but is available along Deer Road and that is why they would like the extension and approval to sell lots along Deer Road. Bruce asked David if this could have been approved like this initially and David stated yes. The Board is being asked to grant an extension of approval, to expire on September 13, 2012 and for the subdivision to be amended into two phases, Phase 1 for lots along Deer Road and Phase 2 for the remaining lots. Bruce asked if this project would come under the new rule for the five year extension and David stated not until that new ordinance becomes effective.

The following motion was made:

MOTION: by **Eric Potvin** pursuant to Article XIII, Section 3(k) and Section 11 of the Zoning and Land Use Code to grant a two year extension of approval to Bob Foss/Land Tree Corp. subdivide an 18.47 acre parcel at 34 Deer Road into a 27-lot subdivision for single family homes (Deer Ridge Subdivision)

said extension expire September 13, 2012 and that said approval and extension include phasing of the subdivision into two phases: developing those lots along Deer Road as Phase 1 and the remaining lots in the subdivision as Phase 2. Second by **Paul Robinson**.

VOTED: 6-0 (Passed)

- b. Any other business Planning Board Members may have relating to the duties of the Lewiston Planning Board.

IV. UNFINISHED BUSINESS:

- a. Discussion of YPLAA Survey.

Eric stated he would give YPLAA a list of dates and put it back on their radar. He suggested staff contact them and David stated he could do that.

- b. Zoning and Land Use Updates/Matrix: discuss proposed open space revisions, consolidation of the SR District, and adoption of the matrix (recommendation to table the matter to future date)

David stated he would have to dig into this again soon and would like to get it done sooner than later.

- c. Downtown design standards/guidelines

David stated this will likely be a part of the Riverfront Masterplan.

VII. READING OF MINUTES:

Draft Workshop Minutes for October 18, 2010 were tabled until the next meeting

VIII. ADJOURNMENT: The following motion was made to adjourn.

MOTION: by **Trinh Burpee** that this meeting adjourns at 7:15 p.m. Second by **Paul Robinson**.

VOTED: 7-0 (Passed).

The next regularly scheduled meeting is for Monday, November 22, 2010, at 5:30 p.m.

Respectfully Submitted:

Denis E. Fortier, Secretary